

The Burger Court Opinion Writing Database

Bacchus Imports, Ltd. v. Dias

468 U.S. 263 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

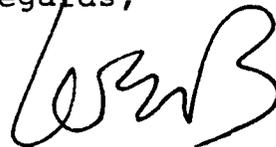
April 5, 1984

RE: 82-1565 - Bacchus Imports, Ltd. v. Dias,
Director of Taxation of the State
of Hawaii

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 24, 1984

No. 82-1565

Bacchus Imports, Ltd., et al.
v. Dias, Director of Taxation
of the State of Hawaii

Dear Byron,

Will you please note at the foot of
your opinion "JUSTICE BRENNAN took no
part in the consideration or decision of
this case."

Sincerely,



Justice White

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: FEB 24 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1565

**BACCHUS IMPORTS, LTD. ET AL. v. HERBERT H.
DIAS, DIRECTOR OF TAXATION OF THE
STATE OF HAWAII**

ON APPEAL FROM THE SUPREME COURT OF HAWAII

[February —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

Appellants challenge the constitutionality of the Hawaii Liquor Tax, which is a 20% excise tax imposed on sales of liquor at wholesale. Specifically at issue are exemptions from the tax for certain locally produced alcoholic beverages. The Supreme Court of Hawaii upheld the tax against challenges based upon the Equal Protection Clause, the Import-Export Clause, and the Commerce Clause. *In re Bacchus Imports, Ltd.*, 65 Hawaii —, 656 P. 2d 724 (1982). We noted probable jurisdiction, — U. S. — (1983), and now reverse.

I

The Hawaii Liquor Tax was originally enacted in 1939 to defray the costs of police and other governmental services that the Hawaii legislature concluded had been increased due to the consumption of liquor. At its inception the statute contained no exemptions. However, because the legislature sought to encourage development of the Hawaiian liquor industry, it enacted an exemption for *okolehao* from May 17, 1971, until June 20, 1981, and an exemption for fruit wine from May 17, 1976, until June 30, 1981.¹ Haw. Rev. Stat.

¹An exemption for *okolehao* that had been enacted in 1960 expired in 1965. 1960 Haw. Sess. Laws, c. 26, § 1. During the pendency of this litigation, the Hawaii legislature enacted a similar exemption for rum manufactured in the State for the period May 17, 1981, to June 30, 1986.

To: The Chief Justice
Justice Brennan
✓ Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

— Stylistic changes throughout —
and pp. 10-12, 14

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1565

BACCHUS IMPORTS, LTD. ET AL. *v.* HERBERT H.
DIAS, DIRECTOR OF TAXATION OF THE
STATE OF HAWAII

ON APPEAL FROM THE SUPREME COURT OF HAWAII

[July —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

Appellants challenge the constitutionality of the Hawaii Liquor Tax, which is a 20% excise tax imposed on sales of liquor at wholesale. Specifically at issue are exemptions from the tax for certain locally produced alcoholic beverages. The Supreme Court of Hawaii upheld the tax against challenges based upon the Equal Protection Clause, the Import-Export Clause, and the Commerce Clause. *In re Bacchus Imports, Ltd.*, 65 Hawaii —, 656 P. 2d 724 (1982). We noted probable jurisdiction, — U. S. — (1983), and now reverse.

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The Hawaii Liquor Tax was originally enacted in 1939 to defray the costs of police and other governmental services that the Hawaii legislature concluded had been increased due to the consumption of liquor. At its inception the statute contained no exemptions. However, because the legislature sought to encourage development of the Hawaiian liquor industry, it enacted an exemption for *okolehao* from May 17, 1971, until June 20, 1981, and an exemption for fruit wine from May 17, 1976, until June 30, 1981.¹ Haw. Rev. Stat.

¹An exemption for *okolehao* that had been enacted in 1960 expired in 1965. 1960 Haw. Sess. Laws, c. 26, § 1. During the pendency of this litigation, the Hawaii legislature enacted a similar exemption for rum manufactured in the State for the period May 17, 1981, to June 30, 1986.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 12, 1984

Re: No. 82-1565-Bacchus Imports v. Dias

Dear Byron:

Please join me.

Sincerely,

T.M.
T.M.

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 14, 1984

Re: No. 82-1565 - Bacchus Imports, Ltd. v. Freitas

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 14 AM 0:05

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 25, 1984

82-1565 Bacchus Imports v. Dias

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 1, 1984

Re: No. 82-1565 Bacchus Imports, Ltd. v. Dias

Dear Byron:

I was uneasy with my vote to "reverse" at Conference, and I will wait to see what John writes in this case before signing up one way or the other.

Sincerely,



Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 26 10:18

June 26, 1984

Re: No. 82-1565 Bacchus Imports v. Dias

Dear John:

Please join me in your dissent.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 27, 1984

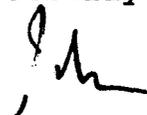
Re: 82-1565 - Bacchus Imports v. Dias

Dear Byron:

As you know, I have always been skeptical of the claim that the exemption for okolehao and pineapple wine had sufficient significance to make the excise tax on the wholesale sale of other liquor a violation of the Commerce Clause. I had not previously focused on the significance of the Twenty-first Amendment because it was not addressed in the Hawaiian courts. However, since the State's newly found argument would sustain the judgment of the State Supreme Court, I suppose it is properly before us. On its merits, if we apply Justice Brandeis' reasoning in the Young's Market case, 299 U.S. 59, I should think we would have to affirm. In other words, if Hawaii could prohibit the importation of any liquor except okolehao and pineapple wine, it seems difficult to see why a modest subsidy for those two products should be unconstitutional. On the other hand, I am persuaded that the Twenty-first Amendment does not provide support for the regulation of advertising of alcoholic beverages and I agree with you that the Amendment should not be construed to entirely remove state regulation of alcoholic beverages from the ambit of the Commerce Clause. In balance, I am still troubled by the case and believe I will try to write something out to help me think through the issues. I must confess that part of my problem is that the possibility that this relatively trivial exemption might result in the State's inability to collect millions of dollars of taxes when the possibility that the business of the wholesalers has in fact been adversely affected seems so remote is most troublesome.

In all events, I will try not to hold you up too long.

Respectfully,



Justice White

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JUSTICE MARSHALL

'84 JUN 25 P12:59

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: JUN 25 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1565

BACCHUS IMPORTS, LTD., ET AL. v. HERBERT H.
DIAS, DIRECTOR OF TAXATION OF THE
STATE OF HAWAII

ON APPEAL FROM THE SUPREME COURT OF HAWAII

[June —, 1984]

JUSTICE STEVENS, dissenting.

Four wholesalers of alcoholic beverages filed separate complaints challenging the constitutionality of the Hawaii liquor tax because pursuant to an exception, since expired, the tax was not imposed on okolehao or pineapple wine in certain tax years.¹ Although only one of them actually sells okolehao and pineapple wine,² apparently all four of them are entitled to engage in the wholesale sale of these beverages as well as the various other alcoholic beverages that they do sell. The tax which they challenge is an excise tax amounting to 20 percent of the wholesale price; presumably the economic burden of the tax is passed on to the wholesalers' customers.

Today the Court holds that these wholesalers are "entitled to litigate whether the discriminatory tax has had an adverse

¹Two of the wholesalers Bacchus Imports, Ltd., and Eagle Distributors, Inc., are appellants in this Court; the other two, Paradise Beverages, Inc. and Foremost-McKesson, Inc., are nominally appellees under our rules, see *ante*, at 2 n. 2, but have filed briefs supporting reversal. All four were parties to the case in the Hawaiian Supreme Court.

²As the Supreme Court of Hawaii noted:

"Paradise acknowledges that it is a 'beneficiary' of the exemptions from taxation provided by HRS in Hawaii. It nevertheless maintains the statute is unconstitutional probably because the volume of sales of the exempted products is relatively insubstantial." App. to Juris. Statement A-34, n. 9.

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To: The Chief Justice
Justice Brennan
Justice White
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Justice O'Connor

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES.

'84 JUN 26 P12:43

From: Justice Stevens

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Recirculated: _____ JUN 26 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1565

BACCHUS IMPORTS, LTD., ET AL. v. HERBERT H.
DIAS, DIRECTOR OF TAXATION OF THE
STATE OF HAWAII

ON APPEAL FROM THE SUPREME COURT OF HAWAII

[June —, 1984]

JUSTICE STEVENS, ^{with whom} dissenting.

Four wholesalers of alcoholic beverages filed separate complaints challenging the constitutionality of the Hawaii liquor tax because pursuant to an exception, since expired, the tax was not imposed on okolehao or pineapple wine in certain tax years.¹ Although only one of them actually sells okolehao and pineapple wine,² apparently all four of them are entitled to engage in the wholesale sale of these beverages as well as the various other alcoholic beverages that they do sell. The tax which they challenge is an excise tax amounting to 20 percent of the wholesale price; presumably the economic burden of the tax is passed on to the wholesalers' customers.

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Justice Rehnquist
and Justice
O'Connor join

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT
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JUSTICE MARSHALL

'84 JUN 28 P1:08

From: Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1565

BACCHUS IMPORTS, LTD., ET AL. *v.* HERBERT H.
DIAS, DIRECTOR OF TAXATION OF THE
STATE OF HAWAII

ON APPEAL FROM THE SUPREME COURT OF HAWAII

[July —, 1984]

JUSTICE STEVENS, with whom JUSTICE REHNQUIST and
JUSTICE O'CONNOR join dissenting.

Four wholesalers of alcoholic beverages filed separate complaints challenging the constitutionality of the Hawaii liquor tax because pursuant to an exception, since expired, the tax was not imposed on okolehao or pineapple wine in certain tax years.¹ Although only one of them actually sells okolehao and pineapple wine,² apparently all four of them are entitled to engage in the wholesale sale of these beverages as well as the various other alcoholic beverages that they do sell. The tax which they challenge is an excise tax amounting to 20 percent of the wholesale price; presumably the economic burden of the tax is passed on to the wholesalers' customers.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 12, 1984

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JUSTICE SANDRA DAY O'CONNOR

No. 82-1565 Bacchus Imports, Ltd. v. Dias '84 MAR 13 A10:14

Dear Byron,

I may well join this opinion, but I prefer to see any other writing before acting on it.

Sincerely,



Justice White

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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JUSTICE MARSHALL

'84 JUN 26 P1:46

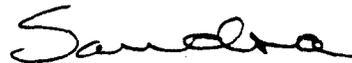
June 26, 1984

Re: No. 82-1565 Bacchus Imports, Ltd. v. Dias,
Director of Taxation etc.

Dear John,

Please join me in your dissenting opinion.

Sincerely,



Justice Stevens

Copies to the Conference